

IN THE COURT OF II ADDL. SENIOR CIVIL JUDGE AND
JMFC, GOKAK

PRESENT

SRI.R.CHANDRAPPA HONNUR, M.A.LL.B(Spl.)
II Addl. Senior Civil Judge & J.M.F.C. Gokak.

DATED THIS THE 4TH DAY OF SEPTEMBER 2020

OS NO.221/2016

PLAINTIFF:

Amar S/o Ramappa Mavingidad,
Age: 27 years, Occ. Private Service &
agriculture,
R/o Kalliguddi, Now at Gokak.

(By Sri. B K J., Adv.)

Versus

DEFENDANTS:

- 1) Ramappa S/o Bhimappa Mavingidad,
Age. 54 years, Occ. Service,
R/o. Kalliguddi, now at Aditya Nagar,
Gokak.
- 2) Smt.Sunanda W/o Ramappa
Mavingidad,
Age. 48 years, Occ. Household work,
R/o. Kalliguddi, now at Aditya Nagar,
Gokak.
- 3) Amogh S/o Ramappa Mavingidad,
Age. 29 years, Occ. Private service &
agriculture,
R/o. Kalliguddi, now at Gokak.
- 4) Mallappa S/o Allappa Arabhavi,
Age. 30 years, Occ. Agriculture,
R/o. Madabhanvi now at Kalliguddi,

Tq.Gokak.

- 5) Allappa S/o Basappa Arabhanvi,
Age. 55 years, Occ. Agriculture,
R/o. Madabhanvi now at Kalliguddi,
Tq.Gokak.
- 6) Nagappa S/o Allappa Arabhavi,
Age. 28 years, Occ. Agriculture,
R/o. Madabhanvi now at Kalliguddi,
Tq.Gokak.

(D1 by Sri. A K K., Adv.

D2 & 3 by Sri. M B B., Adv.

D4 to 6 - exparte)

Date of Institution of suit	30.6.2016		
Nature of suit	Partition and Declaration.		
Date of recording of evidence	15.11.2017		
Date of pronouncement of Judgment	04.09.2020		
Total Duration	<u>Year/s</u> 04	<u>Month/s</u> 02	<u>Day/s</u> 05

J U D G M E N T

The plaintiff has filed a suit against the defendants for partition and separate possession of his 1/4th share in the suit properties. The plaintiff has also sought for declaration that the sale deed executed by defendant No.1 in favour of defendants No.4 and 5 is not binding on his share and costs.

2. Brief facts of the case are as under:

The suit properties originally having Sy.No.100/2/2 measuring 3 acres 13 guntas including 1 gunta of phot kharab. Now the said land was renumbered as RS No.100/2/2 and 100/2/5. The plaintiff and defendant No.3 are the children of defendants No.1 and 2. The defendants No.4 and 5 are alleged purchasers of the suit properties. The suit properties are ancestral joint family properties of plaintiff and defendants No.1 to 3. The plaintiff and defendants No.1 to 3 are in joint possession and enjoyment of the suit properties. The suit properties were granted to father of defendant No.1 namely Bhimappa Yallappa Mavingidad by the Assistant Commissioner, Bailhongal in the year 1969. After the death of Bhimappa, plaintiff and defendants No.1 to 3 are in joint possession of the suit properties. There is no partition in respect of the suit properties. The plaintiff and defendant No.3 are Software Engineers and defendant No.1 is a teacher. The family of plaintiff and defendants No.1 to 3 is financially sound. The suit properties are irrigated lands. The plaintiff and defendants No.1 to 3 are raising crops like sugarcane, maize etc., in the suit properties and jointly paying the land revenue and other tax. The defendant No.1 is not exclusive owner of the suit properties. The defendant No.1 has no salable right, title and interest in the suit properties. The defendant No.1 has created sale deed in the name of

defendants No.4 and 5 behind the back of plaintiff. The defendant No.1 is addicted to bad habits. The sale deed dated 21.3.2004 executed by defendant No.1 in favour of defendants No.4 and 5 is bogus and the same is not binding on plaintiff. The plaintiff, defendants No.2 and 3 are not parties to the alleged sale deed. The defendant No.1 has not obtained consent of the plaintiff at the time of alienation of the suit properties. The possession of the suit properties was not delivered to defendants No.4 and 5 under the alleged sale deed. In the last week, the defendants No.4 to 6 tried to interfere with possession of the plaintiff over the suit properties. Thereafter, the plaintiff has obtained records and found that the defendant No.1 has created a sale deed in favour of defendants No.4 and 5 in respect of the suit properties. The plaintiff has approached the defendant No.1 on 11.6.2016 and requested him to effect partition, but he refused to do the same. Therefore, the plaintiff has constrained to file the suit.

3. In response to the summons, defendants No.1 to 3 have appeared through their counsel. The defendants No.4 to 6 remained absent and set exparte. The defendants No.1 to 3 have not filed written statement

4. To substantiate the case, plaintiff examined himself as Pw.1 and got marked 9 documents at Exs.P1 to 9. The plaintiff has examined two more witnesses as Pws.2 and 3.

The defendants No.1 to 3 neither filed written statement nor cross-examined Pws.1 to 3.

5. Heard learned counsel for the plaintiff. No arguments submitted by the counsel for defendants No.1 to 3. Perused the material on record.

6. The following points would arise for my consideration:

POINTS

1. Whether the plaintiff proves that the suit properties are ancestral joint family properties of himself and defendants No.1 to 3?
2. Whether the plaintiff proves that the sale deed dated 21.3.2004 is not binding on his share in the suit properties?
3. Whether the plaintiff is entitled to 1/4th share in the suit properties?
4. What order or decree?
7. My findings to the above points are as follows:

Point No.1 : In the affirmative

Point No.2 : In the affirmative

Point No.3 : In the affirmative

Point No.4 : As per final order for the following:

REASONS

8. **POINTS NO.1 TO 3:** It is the case of the plaintiff that himself and defendants No.1 to 3 are the members of an undivided family. The suit properties are ancestral joint family properties. The plaintiff and defendants No.1 to 3 are in joint possession and enjoyment of the suit properties. The defendant No.1 addicted to bad habits and sold the suit properties to defendants No.4 and 5 behind the back of plaintiff. The plaintiff has 1/4th share in the suit properties. The sale deed dated 20.1.2004 executed by the defendant No.1 in favour of defendants No.4 and 5 in respect of the suit properties is not binding on his share.

In order to prove the said facts, plaintiff examined himself as Pw.1. Pw.1 has reiterated the averments of plaint in his chief examination. The plaintiff has examined two more witnesses as Pws.2 and 3. Pws.2 and 3 have deposed in support of the case of plaintiff.

In support of the oral evidence, Pw.1 has got marked 9 documents at Exs.P1 to 9. Ex.P1 is the RTC, Ex.P2 is the sale deed, Ex.P3 is form No.8-A, Exs.P4 to 6 are mutation extracts, Ex.P7 is Aadhaar card, Ex.P8 is ration card, Ex.P9 is leaving certificate. Ex.P1 reveals that the suit property is jointly standing in the names of defendants No.4 to 6. Ex.P2 reveals that the defendant No.1 has sold the suit properties to defendants No.4 and 5 for a consideration of Rs.6,92,000/- under a registered sale deed dated 27.3.2014.

Ex.P3 reveals that the suit properties are jointly standing in the names of defendants No.4 and 5. Ex.P4 reveals that the khata of suit properties was mutated in the name of father of defendant No.1. Ex.P5 reveals that as per partition the khata of suit properties and RS No.99/2/1 was mutated in the name of defendant No.1. Exs.P7 and 9 reveal that the plaintiff has been described as son of defendant No.1. Ex.P8 reveals that the plaintiff and defendants No.1 to 3 are residing under a common roof.

On perusal of the oral and documentary evidence on record, it is crystal clear that the suit properties were granted by the Assistant Commissioner Bailhongal in favour of the father of defendant No.1. The suit properties were fallen to the share of defendant No.1 in a partition. Therefore, it is clear that the suit properties are ancestral joint family properties of plaintiff and defendants No.1 to 3. Though the defendants No.1 to 3 have appeared through their counsel, neither they filed written statement nor cross-examined Pws.1 to 3. The oral and documentary evidence of plaintiff remained unchallenged by the defendants No.1 to 3. In spite of service of summons, the defendants No.4 to 6 remained absent. Therefore, there is no reason to disbelieve the version of plaintiff. The plaintiff and defendants No.1 to 3 are governed by Bombay Mitakshar School. The properties are situated at Bombay region. Therefore, the

defendant No.2 being mother of plaintiff is also entitled for equal share in the suit properties. The plaintiff and defendants No.1 to 3 are entitled to 1/4th share each in the suit properties. The sale deed dated 27.3.2004 is not binding on the share of plaintiff, but the same is binding on 1/4th share of the defendant No.1 in the suit properties. Accordingly, points No.1 to 3 answered in the affirmative.

10. **POINT NO.4:** In view of my findings on points No.1 to 3, I proceed to pass the following:

ORDER

Suit of the plaintiff is decreed with costs.

It is declared that the plaintiff is entitled to 1/4th share and defendants No.1 to 3 are entitled to 1/4th share each in the suit properties.

It is further declared that the sale deed dated 21.3.2004 is not binding on the share of plaintiff in the suit properties.

The sale deed dated 21.3.2004 is valid to the extent of 1/4th share of defendant No.1 in the suit properties.

The defendants No.2 and 3 are at liberty to draw decree by paying required court fee on their share.

Draw preliminary decree accordingly.

(Dictated to the judgment writer, transcript revised, corrected and then pronounced by me in the open court on this the 4th day of September 2020.)

(SRI.R.CHANDRAPPA HONNUR)
II Addl. Senior Civil Judge & JMFC Gokak.

ANNEXURE

Witnesses examined on behalf of plaintiff:

Pw.1 : Amar Ramappa Mavingidad
Pw.2 : Hanamant Satteppa Mavingidad
Pw.3 : Aravind Kenchappa Ettinmani.

Documents marked on behalf of plaintiff:

Ex.P1 : RTC
Ex.P2 : Sale deed
Ex.P3 : Form No.8-A
Exs.P4 to 6 : Mutation extracts
Ex.P7 : Aadhaar card
Ex.P8 : Ration card
Ex.P9 : Leaving certificate.

Witnesses examined on behalf of defendants:

- NIL -

Documents marked on behalf of defendants:

- NIL -

(SRI.R.CHANDRAPPA HONNUR)
II Addl. Senior Civil Judge & JMFC Gokak.